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U.S. Citizenship
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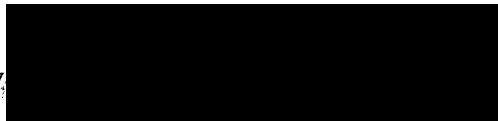
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Office: VERMONT SERVICE CENTER

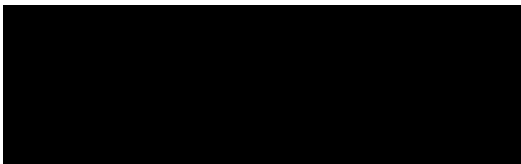
Date: **APR 27 2004**

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(H)(i)(b) of the
Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(H)(i)(b)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

for Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The service center director denied the nonimmigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed. The petition will be denied.

The petitioner is engaged in the business of networking and information technology services, import, export, and financial services. The petitioner endeavors to classify the beneficiary as a nonimmigrant worker in a specialty occupation pursuant to section 101(a)(15)(H)(i)(b) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(H)(i)(b).

The director denied the petition because the proffered position is not a specialty occupation. On appeal, counsel submits a brief that contends that the director's decision is erroneous.

In reaching its decision in this proceeding, the AAO considered the entire record, including: (1) the Form I-129 and its supporting documentation; (2) the director's request for evidence (RFE); (3) the petitioner's response to the RFE; (4) the director's denial letter; and (5) the Form I-290B, counsel's brief, and the documents submitted with the brief.

Upon consideration of the entire record, the AAO has determined that the petitioner has not established that that the proffered position qualifies as a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

Section 214(i)(1) of the Act, 8 U.S.C. § 1184(i)(1), defines the term "specialty occupation" as an occupation that requires:

- (A) theoretical and practical application of a body of highly specialized knowledge, and
- (B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States.

Pursuant to 8 C.F.R. § 214.2(h)(4)(iii)(A), to qualify as a specialty occupation, the position must meet one of the following criteria:

- (1) A baccalaureate or higher degree or its equivalent is normally the minimum requirement for entry into the particular position;
- (2) The degree requirement is common to the industry in parallel positions among similar organizations or, in the alternative, an employer may show that its particular position is so complex or unique that it can be performed only by an individual with a degree;
- (3) The employer normally requires a degree or its equivalent for the position; or
- (4) The nature of the specific duties is so specialized and complex that knowledge required to perform the duties is usually associated with the attainment of a baccalaureate or higher degree.

Citizenship and Immigration Services (CIS) interprets the term “degree” in the criteria at 8 C.F.R. § 214.2(h)(4)(iii)(A) to mean not just any baccalaureate or higher degree, but one in a specific specialty that is directly related to the proffered position.

The crux of the matter is that the evidence of record about the proffered position and its duties is too abstract and generalized. It does not establish how actual performance of the position would involve the application of highly specialized knowledge that is acquired by a baccalaureate or higher degree in a specific specialty. Thus, the AAO’s decision is based not upon the size, age, or scope of the petitioner’s business, but on the lack of concrete information about the specific aspects of the business that would purportedly require the beneficiary to apply highly specialized knowledge that is acquired by at least a baccalaureate degree in a specific specialty.

Here is the description of the proposed duties that appear on the Form I-129, verbatim:

Develop business/financial forecasts, budgets preparation. Monitor various analytical reports, plan and analysis for assigned area element.

The AAO will first review the duties as described in the letter of support that the petitioner’s president submitted with the Form I-129.

According to the letter, the proffered position includes the development of business and financial forecasts. There is no information about the frequency of the forecasts, the factors upon which they were to be based, or the techniques and analytical tools that may be involved. The proffered position also requires “budgets preparation,” but there is no information about the nature of the budgets or to indicate that a highly specialized level of accounting, finance, or other knowledge would be required for this process.

The beneficiary would also “[m]onitor various analytical reports,” but the letter is silent as to the source and content of these documents. While the president’s letter also stated that the beneficiary would be involved in financial planning and analysis (“plan and analysis for assigned area financial element”), no details are provided about this general function.

The letter also tasks the beneficiary with monthly reports and analysis of inventory, as well as maintenance of an inventory reserve and destruction of obsolete inventory. On their face, these duties do not appear especially complex, and the letter presents no information to indicate that they require highly specialized knowledge in any specific specialty. Likewise, the letter is silent about whatever specialized knowledge would have to be applied in the duties denominated “price variance” and “help third party manufacturing analysis.”

Without explanation, the president’s letter also stated that the beneficiary would “[d]etermine business issues that require special analysis” and “[a]ssist assigned area in meeting all financial commitments and goals.” Whatever special skills or knowledge such vaguely defined tasks may require are not self-evident.

The proposed duties also require the beneficiary to “[p]erform Financial Analysis in [a] Marketing environment and with Due Diligence Reviews (DDR).” There is no information about the subject matter of the analysis, its purpose, or the analytical tools that may be involved.

Also according to the letter, the position includes auditing, “resolving business issues,” and “giving business advice related to accounting and finance.” The letter does not provide any details about these duties or the final one listed, “SAP based accounting control, and analysis and management.”

On appeal, counsel lists eight “job duties of the beneficiary” which partly overlap the previously described duties.

According to this new list, the beneficiary would be required to “[p]erform complex financial analysis functions such as forecasts, budgets, spending and forecast analysis.” No factual foundation is provided to substantiate the “complex” nature of these functions. Likewise, no details are provided about the attendant responsibilities, which are described as including “competitive analysis, investment analysis, contract evaluation, product service agreement analysis and funding, etc.”

Counsel’s list of duties also includes coordination of financial information with the accountant “for tax, legal and other issues including identification, research, and discrepancies in financial reports.” The skills required for this aspect are not evident, as there is no description of the content of the financial reports, the standards governing them, or their audience.

The newly stated responsibilities “to analyze and research on requirements for new business opportunities” and to prepare related proposals are stated too abstractly to demonstrate the need for highly specialized knowledge that would be associated with a bachelor’s degree in any specific specialty.

Counsel also adds that the beneficiary would “[c]oordinate and prepare information from different agencies for Mergers and Acquisitions possibilities,” but no information is provided about what skills and abilities would be involved for the actual performance of this duty. Furthermore, there is no indication in the record of any prospect of acquisitions or mergers.

The fourth duty description that counsel adds reads:

[The petitioner] plans to invest in stocks, perform technical and trend analysis on stock for future investments. Co-ordinate and complete special projects within the deadline.

This paragraph provides no meaningful information about the specific tasks involved or any special training or educational requirements for their performance.

The next added duty, on preparing profit and loss balance sheets and preparing and reporting on profit ratio analysis, indicates that the position would require knowledge of relevant accounting principles, but it does not establish the need for a baccalaureate or higher degree, or the equivalent, in accounting, finance, or any other specific specialty. This same comment applies to counsel’s description of the duties involved in “Perform[ing] Financial Analysis in marketing environment with Due Diligence Reviews (DDR).”

Counsel’s description of inventory-related duties does not convey why those duties would require any specialized knowledge.

Counsel also added this generic statement of duties that conveys nothing about the actual matters involved, the requisite analytical tools, or any specialized or complex aspects:

Determine business issues that require special analysis. Assist assigned area in meeting all financial and commitments and goals.

At Exhibit 2 in his submissions on appeal, counsel includes a copy of the section “Financial Analysts and Personal Financial Advisors” from the Department of Labor’s *Occupational Outlook Handbook (Handbook)*, which the AAO recognizes as an authoritative source on the duties and educational requirements of a wide variety of occupations. However, as described in the *Handbook*, the essence of both of these occupations is research, analysis, and advice on investment strategies, an area which does not appear to be the defining concern of the proposed position, although the appeal (at page 5) states that the petitioner “plans to invest in stocks.”

The AAO has fully considered the document entitled “Professional Evaluation” in which Dr. Spieler of Hofstra University opined that the proffered position is a financial analyst position that “is a specialty occupation requiring [a] bachelor’s-level training in business administration, finance, or a related field and the application of specialized knowledge in these fields.”

Dr. Spieler appears well qualified to opine on the educational requirements of financial analyst occupations. However, there are several, independent reasons why Dr. Spieler’s evaluation document is not persuasive.

First, Dr. Spieler has not provided a copy of the “description of the job duties” upon which he based his decision. Thus, the AAO cannot determine the extent to which the information upon which Dr. Spieler’s opinion is based comports with the information that has been provided to CIS. Simply going on record without supporting documentary evidence is not sufficient for the purpose of meeting the burden of proof in these proceedings. *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972).

Next, from the generalized description of duties in the third and fourth paragraphs of his evaluation, it appears that Dr. Spieler based his opinion, at least in part, on generic descriptions of general duties that did not depict specific matters and specific tasks that would engage the beneficiary. Note, for instance, Dr. Spieler’s reference to these generic responsibilities that convey nothing about the concrete nature of the beneficiary’s duties: “preparing and monitoring analytical reports,” “determining business issues which require analysis, and subsequently subjecting these issues to analytical processes,” and “performing third-party manufacturing analyses.” The evaluation of the requisite educational credentials carries little weight, then, for it does not establish a concrete, factual basis for Dr. Spieler to opine about the actual performance required by this particular proffered position.

Finally, Dr. Spieler’s conclusion does not help to substantiate that the proffered position is a specialty occupation. While a baccalaureate degree in finance is a degree in a specific specialty, a baccalaureate degree in business administration is not. A petitioner must demonstrate that the proffered position requires a precise and specific course of study that relates directly and closely to the position in question. Since there must be a close corollary between the required specialized studies and the position, the requirement of a degree with a generalized title, such as business administration or liberal arts, without further specification, does not establish the position as a specialty occupation. *Matter of Michael Hertz Associates*, 19 I&N Dec. 558 (Comm. 1988). By opining that a “bachelor’s-level training in business administration” is one credential that would satisfy the educational requirements of the proffered position, Dr. Spieler has endorsed the position as being less than a specialty occupation within the meaning of 8 C.F.R. § 214.2(h)(4)(iii)(A).

The job vacancy announcements submitted into the record have no evidentiary impact. The performance requirements information about the advertised positions and the one proffered here is too general to yield any meaningful comparison. Furthermore, the evidence does not establish that the advertised positions are parallel to and in similar organizations as the proffered position.

The petitioner's citation to the *Dictionary of Occupational Titles (DOT)* SVP rating of "8" for financial analysts likewise has no evidentiary value. Even if the rating were applicable to proffered position, it does not establish a requirement for a degree in a specific specialty. Furthermore, as noted by the director, the record does not establish the proffered position as a financial analyst as defined in the *DOT*.

The totality of evidence in the record establishes no more than a generally outlined position that appears to involve some knowledge of accounting, finance, and general business concepts. The evidence does not establish that the beneficiary would have to have the knowledge associated with a baccalaureate or higher degree in a specific specialty, such as accounting or finance. Furthermore, the petitioner has not established that the proffered position shares an industry-wide specialty degree requirement with parallel positions in organizations similar to the petitioner. As generalized as most of the descriptions are, the record does not convey anything especially complex, unique, or specialized about the proposed position or its duties. Of course, the petitioner's past hiring record is not a factor, as this appears to be the first time the petitioner is offering the position in question. In sum, the record provides no evidentiary basis for finding a specialty occupation under any criterion at 8 C.F.R. § 214.2(h)(4)(iii)(A).

The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not sustained that burden.

ORDER: The appeal is dismissed. The petition is denied.